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LETTER DATED 27 JUNE 1993 FROM THE PERMANENT REPRESENTATIVE OF CROATIA TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

With respect to the letter addressed to you by the Chargé d'affaires of the Permanent Mission of a country provisionally referred to as the "Federal Republic of Yugoslavia (Serbia and Montenegro)", published as a document of the Security Council (S/26038) and informing you of a letter from the Minister for Foreign Affairs, Mr. Vladislav Jovanovic, addressed to the Co-Chairmen of the International Conference on the Former Yugoslavia, I have the honour to transmit herewith the text of a letter from the Minister for Foreign Affairs of Croatia, Mr. Mate Granic, addressed to the Co-Chairmen of the International Conference on the Former Yugoslavia.

I would ask for your kind assistance in distributing this letter and its annex as a document of the Security Council.

(Signed) Mario NOBILO
Permanent Representative

Annex

Letter dated 27 July 1993 from the Minister for Foreign Affairs of Croatia addressed to the Co-Chairmen of the International Conference on the Former Yugoslavia

With respect to the letter addressed to you by the Minister for Foreign Affairs of a country provisionally referred to as the "Federal Republic of Yugoslavia (Serbia and Montenegro)", published as a document of the Security Council (S/26038), the Government of Croatia would like to point out some of the well-known facts concerning the legal basis of the Arbitration Commission in the framework of the International Conference on the Former Yugoslavia (the Badinter Commission), and the legitimacy of its decisions. In this respect, I would like to draw your attention to the following.

The Arbitration Commission was established as a body of the Conference for Peace in Yugoslavia by the declaration on Yugoslavia adopted at an extraordinary meeting of Ministers of the European Community in the context of European political cooperation on 27 August 1991 (see S/22991, annex) - for the purpose of establishing an arbitration procedure which was to lead to decisions. This arrangement was accepted by the six former Yugoslav Republics at the opening of the Conference for Peace on 7 September 1991. From the terminology used and the composition of the Commission, it is clear that all parties have agreed "to create a body capable of resolving on the basis of law the differences which were to be submitted to the Commission by the parties, which precisely constitutes the definition of arbitration" [Interlocutory Decision (opinions Nos. 8, 9 and 10), para. 2, p. 3]. Thus, it is obvious that all the essential elements for establishing arbitration in accordance with international law were fulfilled.

In a new declaration of 3 September 1991 (see S/23010, annex), the European Community and its member States established the general principles of procedure for the Arbitration Commission, stressing that the rules of procedure for the arbitration would be established by the arbitrators, after taking into account existing organizations in that field. The six Republics also accepted this arrangement.

In conformity with the foreseen rules of procedure, the Republic of Serbia took the initiative of submitting the first two questions to the Commission, transmitted by the Chairman of the Conference. The third question was submitted by the Chairman on his own behalf. All the Republics took part in this procedure and none made the least mention of any incompetence on the Commission's part. Thus, they all demonstrated an identical interpretation of its mandate, thereby recognizing its competence.

The Arbitration Commission, proceeding in a matter initiated on 18 May 1992 by the then Chairman of the Conference, Lord Carrington, stated in its Interlocutory Decision (opinions Nos. 8, 9 and 10) on 4 July 1992 that the Commission itself was to give a judgement on its competence when it was so seized (compétence de la compétence). At the same time - as Serbia and Montenegro challenged the Commission's competence to give an opinion on the questions submitted to it - the Commission also confirmed that in that case it

was competent to reply to the three questions submitted to it by the Chairman of the Conference. In the same Decision, the question of the legal nature of the Commission was also broadly elaborated on.

I would also like to remind you that the legality of the first seven decisions of the Badinter Commission (opinions Nos. 1-7) were neither challenged nor denied. Therefore, it must be emphasized that such unilateral action of one party denying subsequently the legality of the decisions and the competence of the tribunal to which it had agreed ab initio and in whose work it had actively participated, should be qualified as mala fide behaviour. Consequently, it should be stated that only all the parties in the framework of the International Conference on the Former Yugoslavia can decide on the future changes, if any, in the mandate of the Arbitration Commission.

Following the aforementioned, it is obvious that any proposal to establish a new ad hoc arbitral tribunal or to submit the differences existing in the framework of the International Conference on the Former Yugoslavia to the Permanent Court of Arbitration at the Hague would be aimed at avoiding existing obligations and postponing the peaceful settlement of the legal issues arising from the dissolution of the former Yugoslavia. Whatever arbitral tribunal is chosen, its task is the same: all arbitral tribunals have to resolve the submitted disputes on the basis of law.

Mate GRANIC
Deputy Prime Minister and
Minister for Foreign Affairs